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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

ORIGINAL

In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service

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MM Docket No. 87-268

To: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION

**KM COMMUNICATIONS, INC.**

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Its Attorneys

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## **EXECUTIVE SUMMARY**

KM Communications, Inc. ("KM") respectfully requests that the Commission reconsider certain digital television allotments made which affect KM and the treatment of low power television ("LPTV") stations in the recently adopted Fifth Report and Order and Sixth Report and Order in the DTV (or advanced television) proceeding.

KM, as the permittee for several new full power television stations, is an "eligible broadcaster," as that term is defined by statute and the Commission, and therefore is entitled to a DTV channel to be paired with its analog National Television System Committee ("NTSC") channel which fully replicates KM's authorized NTSC service coverage area. However, the DTV allotment to be paired with KM's NTSC channel at Sierra Vista, Arizona, was made without reference to the correct parameters specified in KM's NTSC channel construction permit, due to a Commission processing error that since has been corrected, and therefore KM's DTV allotment must also be corrected to fully accommodate KM. KM also requests that the Commission protect the allotment of a new channel to Boise, Idaho, in substitution for the current NTSC Channel 14 allotment to that community, as proposed in a petition for rule making filed by KM and pending prior to the July 25, 1996 freeze on such petitions.

KM, as the licensee of four LPTV stations, also requests that the Commission reconsider its treatment of LPTV stations in the DTV orders, which will result unnecessarily in the wholesale displacement of LPTV stations. The continued use of television channels 60 to 69, among other changes, would alleviate or at least minimize such undesirable LPTV displacement. The Commission must also take stronger relief measures for any LPTV stations that are displaced.

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**PETITION FOR RECONSIDERATION**

KM Communications, Inc. ("KM"), by its counsel, and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, respectfully requests that the Commission reconsider certain actions taken in the Fifth Report and Sixth Report in the above-captioned digital television ("DTV") proceeding,<sup>1</sup> as more specifically set forth herein.<sup>2</sup>

KM is a woman-owned and minority-owned Illinois corporation,<sup>3</sup> and currently: (i) is the licensee of four Low Power Television ("LPTV") stations;<sup>4</sup> (ii) is the permittee for three

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<sup>1</sup> Advanced Television Systems And Their Impact Upon The Existing Television Broadcast Service, MM Docket No. 87-268, Fifth Report and Order, FCC 97-116 (released April 21, 1997)("Fifth Report"), and Sixth Report and Order, FCC 97-115 (released April 21, 1997)("Sixth Report"), respectively.

<sup>2</sup> The Commission has authorized the filing of consolidated petitions for reconsideration of the Fifth Report and Sixth Report. See Advanced Television Systems And Their Impact Upon The Existing Television Broadcast Service, MM Docket No. 87-268, Order Permitting the Filing of Combined Petitions, DA 97-1193 (released June 5, 1997).

<sup>3</sup> Mrs. Myoung Hwa Bae, a minority under the Commission's Rules by virtue of her Asian heritage, is the President, Treasurer, sole Director and 100% shareholder of KM.

<sup>4</sup> WOCH-LP and WOCK-LP, Chicago, Illinois; WSKC-LP, Atlanta, Georgia; and WMKE-LP, Milwaukee, Wisconsin.

new full power commercial television stations, and its principal holds a 50% equity interest in the permittee for another new full power commercial television station;<sup>5</sup> (iii) has an application pending for a new full power commercial television station for which a universal settlement agreement has been on file with the Commission for 18 months which, if approved, would result in the grant of KM's application;<sup>6</sup> and (iv) has applications pending for additional new full power commercial television stations.

As an LPTV licensee and a full power television permittee and applicant, KM has standing as an "interested person" to file this petition for reconsideration. See 47 C.F.R. § 1.429(a). KM participated in this proceeding by filing comments<sup>7</sup> in response to the Sixth Further Notice of Proposed Rulemaking.<sup>8</sup>

KM respectfully requests reconsideration of the following issues:

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<sup>5</sup> KM is the permittee for new full power commercial television stations KWKB(TV), Channel 20, Iowa City, Iowa (FCC File No. BPCT-941215KF); KAUC(TV), Channel 58, Sierra Vista, Arizona (FCC File No. BPCT-941021KI); and KCFG(TV), Channel 9, Flagstaff, Arizona (FCC File No. BPCT-950317KN). KM's principal, Mrs. Bae, holds 50% of the membership interests in OKC-30 Television, L.L.C. ("OKC-30"), which is the permittee (FCC File No. BPCT-950814KE) for a new full power commercial television station, KAQS(TV), on Channel 30 at Shawnee, Oklahoma, as the result of a settlement in which KM dismissed its application for Shawnee (FCC File No. BPCT-950331KE).

<sup>6</sup> KM is a party to a joint request for approval of a universal settlement agreement filed on December 14, 1995, for its application for Channel 14 at Boise, Idaho (FCC File No. BPCT-941215KF).

<sup>7</sup> See Comments of KM Communications, Inc., filed November 22, 1996 ("KM Comments").

<sup>8</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996)("Sixth FNPRM").

**I. The DTV License Issued To KM For DTV Channel 44 At Sierra Vista Does Not Replicate KM's Authorized NTSC Grade B Service Area**

In the Fifth Report, the Commission determined that analog National Television System Committee ("NTSC") stations and DTV stations will be licensed under a single, paired license, see Fifth Report at ¶ 59, and issued initial DTV licenses to "eligible broadcasters," subject to certain conditions. Id. at ¶¶ 68-69. The Commission defined "eligible broadcasters" as "those broadcasters who, as of the date of issuance of the initial [DTV] licenses, hold a license to operate a television broadcast station or a permit to construct such a station, or both." Id. at ¶ 17.

In making initial DTV channel allotments, the Commission provided a DTV allotment for "all eligible broadcasters," see Sixth Report at ¶¶ 8-11, using a "service replication" or "full accommodation" approach -- i.e., to the extent possible the Commission attempted to provide all eligible broadcasters a DTV allotment that would allow DTV service to a geographic area comparable to the broadcaster's authorized NTSC Grade B service area. Id. at ¶¶ 29, 90, 194, 205-206. The Commission claimed that the engineering database on which the DTV Table of Allotments<sup>9</sup> was based should have included new stations and modifications granted as of April 3, 1997. Id. at ¶¶ 33, 196.

KM is the permittee for a new full service NTSC commercial television station on Channel 58 at Sierra Vista, Arizona (FCC File No. BPCT-941021KI). The construction permit was originally granted on November 22, 1996,<sup>10</sup> well prior to the April 3, 1997 issuance of

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<sup>9</sup> See 47 C.F.R. § 73.622(b) (the "DTV Table").

<sup>10</sup> As originally issued, the construction permit did not reflect the parameters specified in the last application amendment filed by KM on June 28, 1996, but rather reflected

the initial DTV licenses. Accordingly, KM is an "eligible broadcaster" with respect to the authorized new Sierra Vista station, and was issued a DTV license for Sierra Vista, see Fifth Report, Appendix E at 4, for DTV Channel 44. See Sixth Report, Appendix B, Table 1 at B-9.

However, the parameters specified in the allotment of DTV Channel 44 do not replicate KM's authorized NTSC Grade B service area, or even come close, since the DTV allotment was not based on the correct parameters specified in the reissued construction permit, but rather reflect the parameters in KM's application prior to the June 28, 1996 amendment of the application. When notified of the incorrect parameters on the permit, the Commission reissued a corrected construction permit, but apparently did not correct its engineering database prior to April 3, 1997 to reflect the correct parameters as specified in KM's June 28, 1996 application amendment.

Specifically, Table 1 to Appendix B of the Sixth Report does not reflect the correct current service parameters for the authorized NTSC operation of the station, in terms of the antenna height above average terrain ("HAAT"), service area or population, and Table 2 does not reflect the correct reference coordinates for the DTV allotment. In Table 1, instead of an existing NTSC service to 4,711 square kilometers and approximately 59,000 people from a HAAT of 81 meters, see Sixth Report at B-9, KM is authorized under the permit to provide NTSC service to 15,349 square kilometers and approximately 719,095 people, with a HAAT of 331 meters, see FCC File No. BPCT-941021KI (as last amended on June 28, 1996), which are very significant differences. In Table 2, the correct reference coordinates for the DTV allotment

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the parameters specified in a prior amendment filed by KM on February 2, 1996. At KM's request, the Commission reissued the permit to correct this error. A copy of the construction permit with the correct parameters is attached hereto as Exhibit A.

should be the 31° 45' 33" north latitude and 110° 48' 02" west longitude specified in the reissued permit, and not the 31° 33' 59" north latitude, 110° 13' 57" west longitude coordinates specified in Table 2. See Sixth Report at B-48.

KM respectfully requests that the Commission correct the DTV Table to specify a DTV allotment and associated parameters to provide KM a DTV channel in Sierra Vista with a service area that fully replicates KM's authorized NTSC Grade B service area, in compliance with the Commission's "service replication" approach and "full accommodation" goals, and consistent with the DTV allotments provided to all other eligible broadcasters.

## **II. The Commission Did Not Protect The Proposed Allotment Of NTSC Channel 21 To Boise, Idaho As Proposed In KM's Pending Petition For Rule Making**

The Commission claimed in the Sixth Report that it would "avoid creating DTV allotments that would conflict with proposed new NTSC allotments." See Sixth Report at ¶ 112. Since July 25, 1996, the Commission will not accept petitions for rule making to add new NTSC channels to the NTSC Table of Allotments,<sup>11</sup> although petitions to change channels will still be accepted, and any pending petitions will be addressed on a case-by-case basis. Id. at ¶ 105.

On July 10, 1996 (prior to the freeze on new petitions for rule making), KM filed and has pending a Petition for Rulemaking to substitute a new NTSC channel for Channel 14 at Boise, Idaho,<sup>12</sup> and requesting cut-off protection to permit KM to amend its pending application for Channel 14 at Boise to specify the new substituted channel, a change that would resolve

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<sup>11</sup> See 47 C.F.R. § 73.606(b) (the "NTSC Table").

<sup>12</sup> See Petition for Rulemaking, RM-9039, filed July 10, 1996, by KM Communications, Inc. (as amended, the "Boise Petition").



certain land mobile radio interference concerns with Channel 14. KM originally proposed substituting NTSC Channel 21 for Channel 14, but the Commission allocated Channel 21 as a DTV channel in Boise,<sup>13</sup> despite KM's proposal in the pending Boise Petition. KM subsequently amended the Boise Petition to specify substituting NTSC Channel 33 for Channel 14, and demonstrated that no interference would be caused to any other NTSC station or DTV Table allotment.<sup>14</sup> As set forth more fully in the Boise Petition, the proposed channel change would facilitate the processing and grant of a universal settlement agreement that has been pending before the Commission since December 1995 and speed the introduction of a new commercial television service to Boise, by resolving certain land mobile radio potential interference concerns that have delayed action on the pending settlement.

KM respectfully requests that the Commission protect the proposed substitution of NTSC Channel 33 for Channel 14 at Boise, particularly in the event any further changes are made to the initial DTV Table which may preclude the proposed channel substitution.<sup>15</sup>

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<sup>13</sup> See Sixth Report, Appendix B, Table 1 at B-18 (allotting Channel 21 as the DTV channel to be paired with NTSC Channel 4 licensed to an existing eligible broadcaster in Boise).

<sup>14</sup> See Amendment to Petition for Rulemaking, RM-9039, filed May 15, 1997.

<sup>15</sup> KM understands that the May 15, 1997 amendment to the Boise Petition should not be precluded by the freeze on petitions for rule making proposing new allotments, since the proposed channel change should still be permitted. See Sixth Report at ¶ 112. However, in the event that the Commission finds that the freeze may preclude the amendment, KM requests that the Commission reconsider the allotment of DTV Channel 21 to Boise so that Channel 21 may be substituted for NTSC Channel 14, as originally proposed in the Boise Petition.

**III. The Commission's DTV Rules Will Unnecessarily Displace LPTV Stations, Which Will Have Serious Adverse Effects On The LPTV Industry**

**A. The Commission Failed to Address the Wholesale Displacement of LPTVs.**

The Commission declined to consider the serious detrimental effect on the LPTV industry as a whole when adopting the DTV Table, citing instead the secondary status of LPTV stations and the Polar Broadcasting decision.<sup>16</sup> The Commission's decision, however, did not consider or address the distinction raised by KM,<sup>17</sup> as well as by the Community Broadcasters Association ("CBA")<sup>18</sup> and perhaps other parties, between the occasional displacement of an LPTV station by a primary full power station (which traditionally has been the practical consequence of LPTV, or other services, being secondary) as compared to the wholesale displacement of hundreds of LPTV stations so that spectrum may be recovered for as-yet undetermined uses, and likely auctioned to the highest bidder for non-broadcast uses. In this instance, the Commission has not satisfied its obligation to consider fully the economic impact on existing licensees of amending its rules, based on the record in the proceeding.<sup>19</sup>

By failing to even attempt to protect LPTV stations or minimize their displacement, the Commission has acted inconsistently with its traditional theory that "preserving continuity of meritorious service furthers the public interest, both in its direct consequence of bringing proven

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<sup>16</sup> See Sixth Report at ¶¶ 11 and 81, and n.148, citing Polar Broadcasting v. FCC, 22 F.3d 1184 (D.C. Cir. 1994).

<sup>17</sup> See KM Comments at 7-8.

<sup>18</sup> See Comments of the Community Broadcasters Association, filed November 22, 1996, at 19-20 ("CBA Comments").

<sup>19</sup> See FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 805, 43 RR 2d 152, 174 (1978) ("National Citizens"); Carroll Broadcasting v. FCC, 258 F.2d 440, 443-444 (D.C. Cir. 1958).

broadcast service to the public, and in its indirect consequence of rewarding - and avoiding losses to - licensees who have invested the money and effort necessary to produce quality performance." See National Citizens, 43 RR 2d at 174. It is undisputed on the record, and even by the Commission, that the LPTV industry provides "meritorious service," yet the Commission finds without clear explanation that the "public interest" would be better served by the displacement of LPTV stations and the recovery of channels 60 to 69 for some as yet undetermined future services. KM, as well as other LPTV licensees, will incur substantial economic losses from the displacement of its stations and resulting discontinuance of operations,<sup>20</sup> and such private economic losses are a relevant consideration where, as with KM, there will be "an adverse effect on the provision of broadcasting service to the public," which will discourage investments to provide such quality service. Id. at n.24.

Accordingly, the Commission should reconsider the DTV Table allotments, as well as the underlying methodology for its development, and develop a DTV Table which minimizes the displacement of LPTV stations by all available means, including the use of channels 60 to 69.

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In 1996, KM invested approximately \$1 million in one of its LPTV stations alone, completing a multi-year process begun in April 1994 to upgrade service on its LPTV station WOCH-LP, Channel 28, Chicago, Illinois, only to find that the station will be forced off the air (with no alternate channels) by the latest DTV Table. KM already offers Russian and Spanish language programming in WOCH-LP, and planned to offer Korean and other Asian language programming on the station by the end of the year (which plans are now in jeopardy due to the DTV allotments). WOCH-LP provides an affordable alternative outlet for minority programming in Chicago, the loss of which (in addition to the approximately \$1 million stranded investment loss by KM) will leave no competitor to the only other station in the Chicago area providing minority programming.

**B. Use of Channels 60 to 69 Would Minimize LPTV Displacement.**

The Commission rejected arguments to use channels 60 to 69 for DTV allotments to lessen the impact on LPTV, finding that the "principal impact" on LPTV arises from the full accommodation of full power stations. See Sixth Report at ¶ 81. This finding, however, is directly contradicted within the same order, where the Commission finds that there is "insufficient spectrum in the broadcast TV bands to factor in low power displacement considerations in making DTV allotments." Id. ¶ 141. Obviously, the ten additional channels of spectrum already in the broadcast TV band, from channels 60 to 69, would alleviate or at least minimize the displacement of LPTV stations, if the Commission used those channels when making DTV allotments.

The Commission's reasoning, which KM suggests is seriously flawed, lies in the Commission's finding that "the potential benefits of recovering channels 60-69 ... outweigh any additional impact this plan may have on low power operations." See Sixth Report at ¶ 81. This impact analysis certainly does not appear accurate or reasoned from the perspective of existing LPTV operators, who have made considerable investment in their stations, and particularly to an LPTV licensee such as KM, which has recently invested approximately \$1 million in just one of its four LPTV stations alone.<sup>21</sup> The Commission does not elaborate on the "potential" benefits of recovering channels 60 to 69, probably since the determination of any potential future use of the spectrum has been deferred to a future separate proceeding. See Sixth Report at ¶ 80. Therefore, any comparison of the potential benefits of the channel recovery to the very real

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<sup>21</sup> As noted, KM is minority-owned and provides programming targeted to serve the needs of minority communities in the Chicago area on its recently upgraded station, WOCH-LP, Channel 28, Chicago, Illinois.

and serious detriment of the wholesale displacements that will occur in the LPTV industry is impossible, or at least speculative at best.<sup>22</sup>

Accordingly, KM submits that the Commission's impact analysis is seriously flawed and must be reconsidered, and that the Commission should use channels 60 to 69 when making DTV allotments in order to minimize the displacement of LPTV stations. Other LPTV displacement relief measures adopted by the Commission are appropriate and perhaps useful measures, but by no means do such measures "provide significantly more relief for LPTV than the reservation of channels," see Sixth Report at ¶ 142, and such measures alone are insufficient to prevent the wholesale displacement of LPTV stations. Logically, this conclusion follows directly from the Commission's own finding that displacement of LPTV stations will result due to "insufficient spectrum" in the television band, since the planned recovery of channels 60 to 69 would only exacerbate the shortage of spectrum.

#### **IV. Relief For Displaced LPTV Stations**

##### **A. Compensation to Displaced LPTV Stations.**

The issue of whether displaced LPTV stations should be compensated, and how they should be compensated, is an integral part of the DTV allotment process and should not be deferred to a separate future proceeding, as proposed by the Commission.<sup>23</sup> Unless appropriate

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<sup>22</sup> Indeed, it seems clear that budgetary considerations and not telecommunications policy have driven the decision to withdraw channels 60 to 69 from broadcast use.

<sup>23</sup> See Sixth Report at ¶ 80 (whether to compensate displaced full service and LPTV stations displaced from channels 60 to 69 deferred to separate proceeding) and ¶ 143 (whether to compensate displaced LPTV stations in general to be addressed in separate proceeding).

action is taken on reconsideration, the DTV Table adopted by the Commission, and particularly the "recovery" of channels 60 to 69 for reallocation to new uses, will result in the displacement of a large number of LPTV stations, and therefore the issue of compensation to displaced LPTV stations must be addressed at this time. Although the Commission may defer resolution of central issues in a rule making in appropriate circumstances, the Commission "cannot 'restructure [an] industry on a piecemeal basis' through a rule that utterly fails to consider how the likely future resolution of crucial issues will affect the rule's rationale," and such "an incremental approach to agency decision making is least justified when small errors in predictive judgments can have catastrophic effects."<sup>24</sup> In this instance, the fundamental restructuring of the LPTV industry that will result from the DTV rules cannot be resolved "piecemeal" where a key rationale for rules -- that the potential benefit of the possible new uses of channels 60 to 69 outweigh the destruction of the established and thriving LPTV industry -- cannot be determined at this time, and this error by the Commission will certainly have a catastrophic effect on LPTV licensees.

In other recent decisions where the Commission has displaced a whole class of users from a portion of the spectrum in order to reallocate that spectrum for new uses, the Commission has addressed compensation to the displaced users in the same proceeding, and generally has required compensation to the displaced licensees,<sup>25</sup> and cases where compensation was not

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<sup>24</sup> See National Association of Broadcasters v. FCC, 740 F.2d 1190, \_\_\_, 56 RR 2d 1105, 1121 (D.C. Cir. 1984) ("NAB v. FCC").

<sup>25</sup> See, e.g., Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, First Report and Order, FCC 97-93, 6 CR 1025 at ¶ 33 (1997) (MSS operators must bear "cost of all steps necessary for clearing" broadcast auxiliary service licensees from band for MSS operations);

allowed are readily distinguished.<sup>26</sup> The Commission must use the same approach in this proceeding and address compensation to displaced LPTV stations at this time, and not defer consideration of the issue to some later date. Any delay would introduce unacceptable uncertainty for LPTV licensees, and may result in no decision, or a decision well after the time when a displaced LPTV licensee could benefit from any provisions for compensation.

**B. Use of Channels 60 to 69 in Major Urban Markets for Displaced LPTVs.**

At a minimum, if the Commission does not reconsider and develop a DTV Table which minimizes the displacement of LPTV stations by using channels 60 to 69, the Commission should allow displaced LPTV stations in major urban markets to use channels 60 to 69, with protection from any future allocations or users of that spectrum. For example, in a major markets such as Chicago, where KM's LPTV station WOCH-LP would be displaced, there are no available alternate channels below channel 60, due to the congestion of the spectrum in that

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Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order, FCC 92-437, 7 FCC Rcd 6886, 71 RR 2d 349 at ¶ 24 (1992)(emerging technology service provider [PCS] must pay relocation expense of relocating existing incumbent microwave users); Radiodetermination Satellite Service, GEN Docket Nos. 84-689 and 84-690, Report and Order, FCC 85-388, 58 RR 2d 1416 (1985)(RDSS licensees must pay costs of modifying existing licensee's operations if necessary to resolve interference to RDSS operations).

<sup>26</sup> For example, when direct broadcast satellite ("DBS") displaced terrestrial fixed services ("FS") compensation was generally denied, but the Commission had to distinguish precedents which required mandatory compensation. See County of Los Angeles, California, 102 FCC 2d 724, \_\_\_, 59 RR 2d 439, 446 at ¶ 23 (1985). However, in that instance alternate spectrum had already been identified and allocated for the FS licensees, on an expedited basis, id. at ¶ 27, the spectrum had been allocated for DBS by international treaty so that the allocation change was necessary for international comity, id. at ¶ 3, and special relief was available to require mandatory compensation in specific compelling circumstances despite the general policy of no compensation. Id. at ¶ 28.

very urbanized region of the country. The reservation of channels for displaced LPTV stations in such urban areas, with protection from future allocations and users, is an appropriate and necessary way to prevent the loss of valuable LPTV services.

Furthermore, it is fundamentally unfair for some LPTVs in a given market to be displaced arbitrarily while other LPTV stations in the same market do not get displaced, due simply to the vagaries of the Commission's allotment software. The reservation of sufficient channels to ensure that any displaced LPTV station in such urban areas will have an alternate channel in the market would be an appropriate means of preventing such potential unfairness, as well as the economic losses to the LPTV stations which would otherwise be forced off of the air.

**C. Preference for Displaced LPTV Stations for any Cancelled DTV Licenses.**

The Commission has requested that eligible broadcasters that do not want their DTV licenses cancel their DTV license within 90 days, and indicated that the Commission would issue a Public Notice to address the procedures for awarding any such channels. See Fifth Report at ¶ 70 and n.156. In the event any such DTV licenses are cancelled and the allotted channels returned, KM submits that the Commission should give a preference for such channels to any displaced LPTV stations in that market.

**D. Clarification of Filing Dates for LPTV Displacement Applications.**

The Commission adopted a rule permitting LPTV stations displaced by new DTV stations to apply for a suitable replacement channel without being subject to competing applications, see



Sixth Report at ¶ 144, but did not directly address the timing of when such applications may be filed. In the Sixth FNPRM, the Commission "proposed to permit applications for such 'displacement' relief to be filed at such time as there would be a **reasonable expectation of displacement**; for example, upon the filing of an application by a full service broadcaster for a DTV channel that would conflict with operation of the LPTV or TV translator station," id. at ¶ 114 (emphasis added), but the "reasonable expectation of displacement" does not appear to have been adopted, nor any other standard.

Section 74.702(b) of the Commission's Rules, 47 C.F.R. § 74.702(b), was revised to provide that changes in the DTV Table and authorizations to construct new DTV stations may be made without regard to LPTV stations, and provided that "[w]here such a change results in [an LPTV station] causing actual interference to reception of the ... DTV station, the licensee or permittee of [the LPTV station] shall eliminate the interference **or file an application for a change in channel pursuant to § 73.3572.**" See Sixth Report, Appendix E at E-39, amended § 74.702(b) (emphasis added). Section 73.3572 was not revised to reference new Section 74.706, which addresses DTV station protection.

By reference to the revised Section 74.703, Section 73.3572 permits LPTV stations that cause actual interference to co-channel or adjacent channel DTV stations, see Sixth Report, Appendix E at E-39, amended § 74.703(b), to file a minor modification for change in channel, as well as other technical modifications that may be necessary to remedy the interference, including a change in site of up to 16.1 kilometers. See 47 C.F.R. § 73.3572(a)(2). By reference to the actual interference standard of Section 74.703, and with no reference to the predicted DTV interference standard of new Section 74.706, the Rules suggest that LPTV


stations may not file displacement applications until actual interference is caused to a DTV station, which the Commission has recognized will cause interruptions in the service provided by LPTV stations.

Accordingly, KM requests that the Commission: (i) amend Section 73.3572(a)(2) to reference new Section 74.706 as well as Section 74.705; and (ii) adopt the "reasonable expectation of displacement" standard, as proposed in the Sixth FNPRM, with guidance regarding conditions which would qualify under such standard. For example, the Commission could advise whether a reasonable expectation of displacement arises when: (i) a DTV allotment has been made which conflicts with an LPTV station's channel; (ii) a DTV licensee files its Form 301 application for a construction permit; (iii) a DTV licensee has committed to construct its DTV station within some specific time frame; (iv) channel allotments will be recovered, such as channels 60 to 69; or (v) channel allotments are outside the proposed "core" spectrum, such as channels 52 to 59.

KM also suggests that the Commission should issue a Public Notice as soon as possible to provide clarification and guidance regarding when LPTV stations may file displacement applications, thereby removing uncertainty regarding the Commission's application of this policy, as well as the need to resolve this issue piecemeal in response to individual applications which present the various circumstances.

WHEREFORE, the above premises being considered, KM respectfully requests that the Commission reconsider certain actions taken in the Fifth Report and Sixth Report and grant KM the relief requested herein.

Respectfully submitted,  
KM COMMUNICATIONS, INC.

By:   
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June 13, 1997

## **EXHIBIT A**

Attached hereto is a copy of the construction permit granted November 22, 1996, as corrected, to KM Communications, Inc. (FCC File No. BPCT-941021KI), for a new commercial full power television station KAUC(TV), Channel 58, Sierra Vista, Arizona.



United States of America  
**FEDERAL COMMUNICATIONS COMMISSION**  
**TELEVISION BROADCAST STATION**  
**CONSTRUCTION PERMIT**

Official Mailing Address:

-----  
KM COMMUNICATIONS, INC.  
3654 W. JARVIS  
SKOKIE, IL 60076  
-----

Authorizing Official:

*Clay C. Pendarvis*

Clay C. Pendarvis  
Chief, TV Branch  
Video Services Division  
Mass Media Bureau

Grant Date: November 22, 1996

Call Sign: KAUC

This permit expires 3:00 a.m.  
local time, November 22, 1998

Permit File No.: BPCT-941021KI

This authorization re-issued to reflect engineering specification changes.

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee:

KM COMMUNICATIONS, INC.

Station Location:

AZ-SIERRA VISTA

Frequency (MHz): 734.0 - 740.0

Carrier Frequency (MHz): 735.25 Visual 739.75 Aural

Channel: 58

Hours of Operation: Unlimited

Transmitter location (address or description):

Melendrez Pass designated electronics site in the Coronado  
National Forest, Pima County, AZ

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670  
of the Commission's Rules.

Antenna type: (directional or non-directional): Directional

Description: ANDREW ATW30HS3H-P4 (MOD) - (58) Custom

Beam Tilt: 0.75 Degrees Electrical

Major lobe directions (degrees true): 115.0 352.0

Antenna Coordinates: North Latitude : 31 45 33  
West Longitude : 110 48 2

Transmitter output power.....: As required to achieve authorized ERP

Maximum effective radiated power (PEAK): 5000.0 kW  
: 37.0 DBK

Height of radiation center above ground.....: 53 Meters

Height of radiation center above mean sea level.: 1839 Meters

Height of radiation center above average terrain: 331 Meters

Antenna structure registration number: none

Overall height of antenna structure above ground  
(including obstruction lighting if any): 61 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications  
is in no way to be considered as precluding additional or modified marking  
or lighting as may hereafter be required under the provisions of Section  
303(q) of the Communications Act of 1934, as amended.

None Required

Special operating conditions or restrictions:

1. Grant of this authorization is conditioned on the outcome of the digital television (DTV) rule making proceeding in MM Docket No. 87-268. To the extent that the station's Grade B contour or potential for causing interference is extended into new areas by this authorization, the Commission may require the facilities authorized herein to be reduced or modified.

\*\*\* END OF AUTHORIZATION \*\*\*